

February 12, 2013

VIA EMAIL

The Honorable Denise L. Cote
United States District Judge
Southern District of New York
500 Pearl Street, Room 1610
New York, New York 10007-1312

Re: FHFA Actions, No. 11-cv-5201, et al. (DLC)

Dear Judge Cote:

Per this Court's Expert Scheduling Order of November 26, 2012 (the "ESO") and the status conference held on February 7, 2013, we write on behalf of Plaintiff Federal Housing Finance Agency ("FHFA") as Conservator for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the "GSEs") to report on FHFA's meet-and-confer session with Defendants in the Tranche 3 and 4 Actions, and to request entry of the attached Order establishing the schedule for expert discovery in these Actions.

While FHFA and the Tranche 3 and 4 Defendants have reached general agreement on various aspects of the proposed expert schedule,¹ the parties continue to disagree in two respects.

First, in order to create incentives to collect Loan Files and Guidelines in the Tranche 3 and 4 cases, where collection lags far behind the efforts in the Tranche 1 and 2 cases, FHFA proposes that Defendants should bear the cost of any additional re-underwriting that FHFA must perform as a result of the production of Guideline and Loan File documents produced after April 30, 2013 (or after May 31, 2013 for Sample Loans disclosed by FHFA during or after January 2013), unless there is good cause for the delayed production. The good cause standard would apply whether the documents were produced by a party or third party. As of April 30, 2013, the Tranche 3 and 4 Defendants will have had more than six months to ensure the full and complete production of these materials from their files and the files of the third parties they subpoenaed. Absent good cause, there is no justification for further delay. FHFA respectfully submits that this mechanism is consistent with this Court's prior guidance. *See* Feb. 7, 2013 Hr'g Tr. at 75:24-76:6 ("But I'd want an understanding that we had a process in place that would motivate the Defendants in 3 and 4 to work with the plaintiff to get the sample loan files and the matching guidelines."); *id.* at 68:10-13 (essential that loan files and the guidelines be gathered); *see also* July 31, 2012 Hr'g Tr. at 122:8-123:16 (ordering status reports on production of loan files and guidelines); Oct. 15, 2012 Hr'g Tr. at 36:24-37:3 ("[In] my view if we prioritize the production of the loan files and the underwriting guidelines, then we're doing what we really need to do for this litigation").

¹ As reflected by the competing orders, the parties agree that (i) there should be a process of producing, identifying, and stipulating to Loan Files and Guidelines in those Actions (the "Matching Process"); (ii) this process should be completed by April 30, 2013; (iii) Defendants will disclose their alternative sets related to the Securitizations on May 17, 2013; and (iv) with the exception of FHFA's rebuttal expert report on loss causation, the dates on which the parties shall serve their expert reports, including their re-underwriting reports (provided that the early disclosure of alternative sets requested by FHFA is ordered by the Court).

Second, while the parties appear to agree (as the ESO provided) that the Tranche 3 and 4 Defendants shall disclose their alternative sets of loans related to the Securitizations for purposes of re-underwriting or otherwise on May 17, 2013, they do not agree on when the Tranche 3 and 4 Defendants should disclose any other sets of loans on which they intend to rely, including sets relating to loss causation. Alternative sets relating to loss causation defenses (and possibly other expert areas) could be extensive, and their disclosure on November 21, 2013 (in conjunction with Defendants' expert reports) would fail to afford FHFA adequate time to analyze these sets prior to the submission of its expert rebuttal reports. Accordingly, FHFA proposes that Tranche 3 and 4 Defendants be required to disclose all alternative loan sets (other than sets related to the Securitizations) by September 16, 2013.²

FHFA respectfully requests that this Court enter the proposed Order attached hereto as Exhibit 1.

² There is one other, apparently minor difference between the parties' proposals: while Defendants proposed order repeats certain language from the ESO, FHFA's proposed order cites to the relevant provisions of the ESO and state that those provisions shall apply to the Tranche 3 and 4 Actions.

Respectfully submitted,

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